FILE COPY

No. 143

Office - Supreme Court, U. S
FILED
JUL 22 1937
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1937

UNITED STATES OF AMERICA, *Petitioner*

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

On Petition for a Writ of Certiorari to the Circuit Court of Appeals for the First Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

PRESS OF GEO. H. DEAN CO., BOSTON

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	2
CONCLUSION	10
APPENDIX A	11
APPENDIX B	12

CITATIONS

CASES:

Christianson v. *County of King*, 239 U. S. 356	7
DeArnaud v. *U. S.*, 151 U. S. 483	8
Hamilton v. *Brown*, 161 U. S. 256	7
Hilton v. *Hopkins*, 275 Mass. 59	8
National Home for Disabled Volunteer Soldiers v. *Wood*, 299 U. S. 211	5, 9
Wilbur v. *Tobey*, 16 Pick. 177	6, 7, 8

STATUTES

Act of June 25, 1910, C. 384, 36 Stat. 703, 736 (U. S. C. Title 24, Sec. 136)	11, 12

MISCELLANEOUS

Woerner, American Law of Administration, 3d Ed., p. 459	6
45 Cong. Rec., 7011-7013; 7101	6

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 143

UNITED STATES OF AMERICA, *Petitioner*

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

On Petition for a Writ of Certiorari to the Circuit Court of Appeals for the First Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 24-27) is reported in 15 F. Supp. 139. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 36) is reported in 89 F. (2d) 151, (sub. nom. *Stevens* v. *United States*).

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937. Petition for a writ of certiorari was filed June 15, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Is the Act of June 25, 1910, c. 384, 36 Stat. 703, applicable where a member of a national soldiers' home dies intestate, leaving a widow and four children as his heirs?

2. Does the contract contained in the deceased member's application for admission to the "Home," based on said Act, permit the government to deprive the widow and children of their share of the estate of such deceased member dying intestate, where the government makes no attempt to discover or determine his heirs, with knowledge that said member had a wife and four children living at the time he entered the "Home" two and one-half years prior to his death?

STATUTE INVOLVED

The statute involved is set forth in Appendix A.

STATEMENT

The agreed statement of facts (R. 16-19) may be summarized as follows:

One Thomas McGovern, sometimes known as "Thomas McGoveran," enlisted in the United States Army in 1877 and was honorably discharged therefrom in 1882. On November 11, 1925, at the age of 72, he was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers located at Hampton in the State of Virginia (which place is hereinafter referred to as the "Home"). McGovern signed the usual application for admission to the "Home," based on the provisions of the Act of June 25, 1910, *infra*, Appendix A. This application contained the following provisions:

> "The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law

or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.' ''

At the time of his admission to the "Home," McGovern had a wife and four children living. The wife and three of the children resided in Boston, Massachusetts. Another child was married and lived in New Haven, Connecticut.

In his application, McGovern stated he had a wife and four children, address unknown.

McGovern died September 17, 1928, while a member of the "Home," having lived therein for about two years and ten months. He was survived by his wife and four children, one of whom, a son, had been declared insane in 1918 (R. 17-18). McGovern was a resident of the City of Chelsea, Suffolk County, Massachusetts, since 1889, which place was his legal domicile to the time of his death (R. 18). In 1904 the McGovern home was broken up, McGovern and his son living in one part of Chelsea and Mrs. McGovern and the three other children living in another part of the same city. At the time of his death, McGovern's widow and two of the children were residents of Boston, Massachusetts. Another child lived in New Haven, Connecticut, and the insane son was an inmate of the Massachusetts State Hospital for the Insane at Gardner, Massachusetts.

No one, in behalf of the "Home," made any attempt to locate the widow or children at the time of McGovern's death or at any other time. The widow, Anne J. McGovern, died March 4, 1933, (R. 19) almost four and one-half years after the death of her husband, never having learned of his death (R. 18). The heirs-at-law and next of kin of said McGovern had no knowledge of McGovern's death at any time in the period which constituted five years after September 17, 1928.

At the time of his death, McGovern had a deposit in the Savings Department of the Chelsea Trust Company amounting to over $3,800 (R. 18) and a deposit in the Boston Five Cents Savings Bank just short of $2,000 (R. 19).

The first knowledge of the death of the decedent received by any of his heirs-at-law and next of kin was contained in a letter from the "Home" dated October 19, 1935, addressed to the Respondent Stevens. Subsequently the said Helen J. Stevens was duly appointed administratrix of the Estate of Thomas McGovern by the Suffolk County Probate Court of Massachusetts, and James E. Carroll, Esq., of Boston, was duly appointed, by the same Court, guardian of Robert E. McGovern, the son of the decedent, an insane person.

All of said money and other property, the Estate of said Thomas McGovern, now in the control of the Government, was his own personal estate, and none of it was derived from the United States Government in the form of a pension or otherwise (R. 19).

A bill of complaint was filed by the United States in the United States District Court for the District of Massachusetts against the Chelsea Trust Company and the respondents, on April 10, 1936, in which bill the United States alleged that the Trust Company refused to pay over to it the amount of the deposit, because of the claim of respondents, and asked that the bank deposit be turned over to it (R. 1-6). The bill was answered by the Trust Company, by Helen J. Stevens, who had theretofore been appointed administratrix of the estate of Thomas McGovern, and by the

heirs of Thomas McGovern, the answer denying the application of the statute to the particular facts (R. 6-16). On June 5, 1936, the District Court entered judgment for the United States, and on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting.

ARGUMENT

The petitioner advances, as a reason for granting the writ, that the court below has decided an important question of federal law which should be settled by this court—to wit: that the Act of June 25, 1910, C. 384, 36 Stat. 703, is unconstitutional because a violation of the Tenth Amendment.

But that question, we submit, is not really involved and cannot be finally settled in the determination of this case. We have not contended that the Act as a whole is an unconstitutional invasion of the powers of the states reserved under the Tenth Amendment. The sole question here at issue is whether the Act and an agreement made pursuant to its provisions have any application to the personal estate of a deceased member of a soldiers' home who dies intestate, leaving known heirs. We submit that they do not and were not intended to apply in such circumstances. The issue, therefore, is simply one of the interpretation of the Act and the contract as applying to the peculiar facts involved in the instant case. Whether the Act as a whole is or is not a valid exercise of the powers of Congress will not necessarily be determined. For, if the Act and the contract made pursuant thereto be properly construed, the United States will in no event have any claim to the funds here involved, and the constitutional question raised by the court below will never be reached for decision.

In the recent case of *National Home* v. *Wood*, 299 U. S. 211, where this same Act was before this court in a case involving pension money, Mr. Justice Butler, in defining the scope and effect of the Act, said, at page 215, "Congress

intended to vest in the board of managers for the post fund only that which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State."

The Act was not intended to affect the estate of a deceased member in a soldiers' home if he left heirs. This means *known* heirs, and it must mean this because it is a presumption that every man leaves heirs or next of kin capable of inheriting. There is, however, no presumption as to who the heirs are; therefore there must be an inquest or other proper judicial proceedings to warrant a distribution. *Woerner American Law of Administration,* 3d Ed., p. 459. *Wilbur v. Tobey,* 16 Pick. 177.

Congress never intended this Act to affect the estate of deceased members of a soldiers' home where he left known heirs. 45 Cong. Rec. 7011, 7013, 7101. Appendix B. It is plain from the discussion in Congress when this Act was before it that the proponents of this legislation were seeking to prevent an escheat to the state of domicile of the deceased member, and nothing else.

By the Act of June 25, 1910, Congress for the first time enacted legislation affecting personal property of deceased members of soldiers' homes which was not derived from pension money. In the case now before the court, the government claims title to personal property of a deceased member of a soldiers' home who died intestate, on the ground that no heir has made a claim for it within five years from the date of the death of said member.

The reclamation period of five years was put into the bill to bar unknown heirs, and not known heirs such as a widow or children. It was the more remote heirs we all have that were to be penalized for failure to claim within the time stated.

These respondents deny that they are subject to this reclamation period contained in the Act because they are known heirs and known to the government by the very provisions of the contract; i.e., the application for membership where McGovern states he has a wife and four children, address unknown (R. 17).

McGovern knew that Massachusetts was the State of his domicile; he knew his heirs would be determined by the law of that State. He knew some legal notice would reach his wife and children on his death; he knew his estate would be administered according to law, his bank accounts would be paid to his administrator; that if he had heirs they would, after payment of his debts and the expenses of administration, receive their distributive share of his estate. He also knew that if he had no heirs, such administrator would distribute his estate to the "Home" for the benefit of the post fund, if no person claimed as an heir within five years from the date of his death, and Congress, when it passed this Act, believed that was the kind of contract every member of a soldiers' home made when entering a home. (See Appendix B).

If the Act is to be interpreted in the light of the law of escheat, the government cannot prevail because it neglected to take the steps necessary to establish an escheat; i.e., it failed to have a legal determination of McGovern's heirs. It is now attempting to deprive McGovern's heirs of their property without due process of law.

The petitioner's interpretation of this Act raises the question of its constitutionality. If the Act means that known heirs, as a widow and children, must be on their guard and demand the estate within five years of the death of the deceased member of the home when the fact of his death is concealed from them and known only to the government and its agents, these respondents assert the Act is unconstitutional and deprives them of their property without due process of law.

These respondents claim they can only be deprived of their share of this estate by proper legal proceedings and in no other way.

Hamilton v. *Brown*, 161 U..S. 256, 268, 269, 270, 275

Christianson v. *King County*, 239 U. S. 356

Wilbur v. *Tobey*, 16 Pick. 177-180

If the Act of June 25, 1910, was intended to substitute the United States for the State of Massachusetts in respect to the estate of McGovern, a deceased member of a soldiers' home who died intestate, then the United States must adopt the same procedure that the State of Massachusetts would be required to adopt; that is, a legal proceeding to determine heirs. Without this procedure, no title could vest in the State by escheat. *Wilbur* v. *Tobey,* 16 Pick. 177; *Hilton* v. *Hopkins,* 275 Mass. 59.

During the so-called reclamation period of five years, one of the heirs, Robert E. McGovern, was an insane person and still is such. At no time during that period was he mentally competent to claim his share of his father's estate. A disability by reason of insanity is recognized by the decisions of this court. See *DeArnaud* v. *U. S.,* 151 U. S. 483. The fact that an heir is under a disability during the reclamation period is another good reason for the requirement that there be a determination of heirs before a vesting of title when a state claims property by escheat because in these proceedings the rights of those who are under disability are protected and no advantages taken of the fact of their disability, as is quite apparent in the instant case.

In the petition now before the court, the government has placed great stress on the contractual relations of the parties, McGovern and the "Home." What is the contract? The respondents maintain that McGovern contracted that, if he died intestate leaving no heirs, meaning, of course, no known heirs, his property would vest in the "Home" and that remote persons claiming as heirs would have to claim within five years of the date of his death. Apparently the government contends that McGovern contracted that, on his death, dying intestate, all his property would pass immediately to the "Home," whether he left heirs or not and that, if he left heirs, they would have to reclaim within five years from the date of his death. It is plain McGovern made no such contract. The vesting of the title in the

"Home" depended entirely on his leaving no heirs, meaning, of course, no known heirs.

These respondents do not deny the right of a person to make a contract for the disposition of his property at the time of his decease, but contend that the contract between McGovern and the "Home" is entirely dissimilar from these contracts, held valid by various courts. In none of the cases that have been decided is there a question involving the rights of heirs or a limitation of time. Even in cases where elderly persons contract with Homes for the Aged, for their care, agreeing that all of their property, at their death, shall pass to the home, there is no question of the rights of heirs, nor is a time limit set. These contracts are made by semi-charitable institutions with their members because many of these institutions charge small sums for the care given, but expect to be supported and carried on by property received on the death of inmates.

United States soldiers' homes are supported by appropriations from Congress, and not by the estates of deceased members dying intestate, leaving no heirs. It is true, admission to a soldiers' home is a special privilege, but it is a privilege granted because of the member's military service in behalf of his country, and not because he may die intestate without heirs, and his property pass to the home.

The contention of the petitioner, that the decision of the court below is in probable conflict with the decision of this court in *National Home for Disabled Volunteer Soldiers* v. *Wood,* 299 U. S. 211, is not sound. In that case, the issue was whether or not pension money of a deceased member passed under the Act of June 25, 1910, C. 384, 36 Stat. 703, or under a prior act of Congress which dealt entirely with the disposition of pension money of deceased members of soldiers' homes, and this court held, in that case, that the Act now before the court superseded the old statutes which governed the disposition of the pension money of deceased members of soldiers' homes. The constitutionality of the said Act of June 25, 1910, was not before this court in that case.

CONCLUSION

It is submitted that the decision of the Circuit Court of Appeals is correct. The contention of the petitioner, that an important question of federal law is to be settled in this case by this court, is without merit. It is hardly likely that another case will arise like the one in issue. The real constitutional question, which cannot be settled in this proceeding, will arise under this Act when one of the states denies the right of the United States to receive the property of a deceased member, dying without issue, where there are no known heirs, and an escheat occurs. Then there will be an important question of federal law, deserving the consideration of this court.

The petition, therefore, should be denied.

Respectfully submitted,

CHARLES B. RUGG
WARREN F. FARR
JAMES E. CARROLL

July, 1937.

APPENDIX A

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

APPENDIX B

Discussion by Congressional Committee upon May 27 and May 28, 1910, concerning Act of June 25, 1910, C. 384, 36 Stat. 736, Sec. 136, Title 24, U. S. C., found in Vol. 45, Part 7, pp. 7011-13, 7101 of the Congressional Records. (61st Congress, 2nd Session.)

MR. TAWNEY:

"The reason for this provision is this—and I trust I may have the attention of the Committee, because this is a matter of considerable importance. At all of the homes there are a great many soldiers die, leaving on deposit in the banks of the city in which the home is located a certain amount of money. Now, if they die intestate and without heirs that money remains in the bank. Instances have occurred where men have fraudulently taken out letters of administration for the purpose of getting the money on deposit belonging to the soldier at the time of his death. At the Dayton Home in Ohio there is in the banks today over $30,000 unclaimed by relatives or heirs or legatees.

"That fund is increasing, and the committee had information to the effect that the State of Ohio, proceeding under the law of escheat, was about to bring suit against the managers of the banks to recover that money for the benefit of the State. There is in the neighborhood of $30,000 on deposit in the banks of Milwaukee, and there are large sums of money on deposit, unclaimed, in the banks of the cities where all of the other homes are located. Now: Proceeding upon the theory that *where the old soldier dies without heirs or legatees,* he would rather that money which he leaves behind should be paid into the post fund for the benefit and comfort of his old comrades rather than allow it to go back to the State, of which he might not even be a citizen, because these men who are in the home are not always citizens of the State in which the home is located; for that reason we have provided here, or we have incorporated

this provision, so that in every case where the old soldier dies and leaves money on deposit, or other property undisposed of by will and unclaimed by legatees or heirs, that money shall be used for the benefit of his comrades and not go back to the State under the law of escheat.

"That is the reason for it, and that is all this provision accomplished; and in order to make it legal this provision provides expressly that the form of application be so changed that every old soldier who applies for admission to one of these homes, in making out his application, is notified of this fact and his consent to the disposition of his money and property at the time of his death is obtained. In no other way can we change the law of descent in the States. I do not think there is a member of this House who can justly complain of or criticise the provision. It is in the interest of the old soldiers remaining here after their comrade has died without disposition of his property, that in that event his property, whatever it may consist of, may be deposited for the benefit of those old soldiers who are occupants of these homes."

MR. COX:

"I notice that the paragraph provides that the application shall constitute a binding and valid contract between the applicant and the Board of Managers, not only for the money that the soldier may have as a result of his pension, or the pension he may have remaining at the time of his death, but for all of his personal property. 'Is this proper legislation?' "

MR. TAWNEY:

"Now, the gentleman from Indiana is a lawyer, and a good lawyer, and he knows that is not the effect of this provision. I will say the provision was drawn by Judge Smith after the most careful consideration, taking into account the fact that in all of the States there is provision made for the settlement of estates belonging to deceased citizens. This provision would call to the attention of the applicant and it would be notice to

him that if he had no heirs, which of course he would know, or if he had not made a will disposing of his property, he would have notice of the fact and could arrange to dispose of his property by will."

MR. COX:

"Am I right in construing the provision to mean that the application of the applicant seeking admission to the institution and his admission constitutes a binding contract for the disposition not only of the money he may have as the result of his pension, but of all personal property of which he may be the owner?"

MR. TAWNEY:

"As applied to members of the soldiers homes who die in the homes without disposing of their property by will or otherwise, or *having no heirs.*"

MR. COX:

"But is it not made a matter prerequisite under the paragraph that before an individual can be admitted as an inmate, he must enter a contract bargaining away not only his pension, but his personal property?"

MR. TAWNEY:

"He is not bargaining it away at all. He is merely agreeing that in the event of his death while an inmate of the home, and in the event of his not disposing of the property himself, or of *his having no heirs,* rather than see his property and his money go to the state in which the home is located * * * * * it shall be disposed of for the benefit of his comrades."

MR. COX:

"Does the provision carry all of the personal property that the old soldier may die the owner of while he is an inmate of the institution?"

MR. TAWNEY:

"Certainly. It carries personal property, which includes, of course, any money which he may have on deposit; but it carries it to the home only in the event of his death in the home, *without heirs,* and without having disposed of his property before death."

MR. KEIFER:

" * * * * * I have no trouble about the purpose and propriety of having the estate of deceased members of the National Soldiers Home go to the benefit of their comrades if they die as members intestate and without heirs. But I think it is well for us to look and see whether we can accomplish that purpose by this provision. It is an attempt by federal law to provide a new mode of disposing of an estate without regard to state law. It is an attempt to make, in effect at least, a statute of descent. * * * I think that if the contract is of a proper character it may do this, otherwise I think this provision will merely lead to litigation. *The purpose of the bill is to cut off the right of the state to take the property that in legal effect escheats to the state.*"

(Discussion as to rights of creditors and consensus of opinion that home would only take what was left after all debts of pensioner were paid,—also as to sufficiency of contract and moral question as to whether the State or the institution is more entitled to the funds.)

MR. COX OF INDIANA:

"I do not believe we should offer the old soldiers the necessity to bargain away the pittance he has. My idea is that he should enter the home free and untrammeled."

MR. KEIFER:

"You say the soldier is required to bargain away his property in advance. I do not understand that there is anything of the kind in the provision. On the contrary, he is only *making a contract by which he keeps it from going to the state.*"

MR. COX:

"A man's property rights are absolute, sacred rights. I do not care if he has $5.00 or $5,000,000 worth of property, it is his."

MR. CULLAP:

"I will ask this question. Is it not fair to assume that under this provision any legatee legally entitled to the estate may come in after the death?"

MR. COX:

"That may be true. * * * * I am not clear, however, whether or not a soldier can make a will disposing of his estate after he enters the home. * * * * "

MR. KEIFER:

" * * * * I think the criticism that the soldier may be prevented from making a will by the provisions of the bill is not well taken. The bill allows a soldier at any time after he becomes a member of a home to make a will, and if he makes a will that disposes of his property even to a stranger, no matter whether it disposes of pension money or other property that belongs to him, *or if he dies and leaves anybody under the statutes of descent anywhere in the world to inherit it, then the provision in the bill (that the institution should take the property) could have no application.* The question simply is whether or not we can by proper provision in this bill provide that the soldier shall or can bind himself to allow his estate after his death to go to a post fund of the home in which he is an inmate for the benefit of his surviving comrades in that home.

"I do not believe that we can change the statute of descent of any state, nor do I think we could prevent the estate of any deceased soldier under any contract from being administered upon by the laws of the state in which he was a resident at the time of his death. It would be only by such an appropriate provision as would give the post fund the right to claim it through administration. I was anxious to carry out the purpose

of the provision, so that the old veteran soldier might have the consolation, *if he had no blood kin or relative anywhere in the world to inherit his personal estate, and if he did not exercise the right * * * to dispose of his property by will,* of knowing that when he died and left any personal property, however small, it would go to the comfort of other veteran soldiers who were inmates of the home of which he died a member."

(Italics and also matters in parentheses ours.)